

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF PENNSYLVANIA

3 UNITED STATES OF AMERICA) 5:13-cr-00328-JKG-1
4 vs.) March 13, 2015
5 LOUAY SHAMAN) 2:35 p.m.-5:28 p.m.
6) Philadelphia, PA

7 SENTENCING HEARING
8 BEFORE THE HONORABLE JAMES KNOLL GARDNER
9 UNITED STATES DISTRICT JUDGE

10 APPEARANCES:

11 For the Government: ALBERT S. GLENN, ESQ.
12 KAREN FOX, ESQ.
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P R O C E E D I N G S

(Call to Court)

THE COURT: Good afternoon, ladies and gentlemen.

ALL: Good afternoon, Your Honor.

THE COURT: The matter before the Court this afternoon is the second day of a sentence hearing in the case of United States of America versus Louay Shaman, Case No. 13-cr-00328.

I note the presence of the persons who were present on the first day of this sentence hearing two days ago, March 10, 2015, and that is representing the Government, Assistant United States Elbert S. Glenn. Good afternoon, Attorney Glenn.

MR. GLENN: Good afternoon, Your Honor.

THE COURT: And is Special Agent Smith here today? There he is, Special Agent William G. Smith of the Federal Bureau of Investigation. And is Detective Nicoletti here today?

DETECTIVE NICOLETTI: Yes, Judge.

THE COURT: There he is. Detective Thomas J. Nicoletti of the Upper Saucon Police Department.

I also note the presence of privately retained defense counsel, David Scott Nenner.

1 MR. NENNER: Good afternoon, sir.

2 THE COURT: Good afternoon, Attorney
3 Nenner. And with him is his client, the Defendant,
4 Louay Shaman.

5 THE DEFENDANT: Good afternoon, Your
6 Honor.

7 THE COURT: Good afternoon, Mr. Shaman.

8 Now, although Mr. Shaman was sworn in
9 on Monday, we will swear him in again since there's
10 been a break in the action. You may swear the
11 defendant.

12 THE CLERK: Please rise, please raise
13 your right hand.

14 (Defendant sworn)

15 THE COURT: Please be seated. In
16 addition to the documents which I mentioned on the
17 record as having received and reviewed, on the first
18 day of this hearing, since that time, I received from
19 the defendant a motion for downward departure and/or
20 downward variance and sentencing memorandum. The
21 motion is undated, but the certificate of service is
22 dated March 11, 2015. And the document was filed
23 together with Exhibits A through I on March 11, 2015
24 as Document 72 in this matter.

25 Exhibit A is a letter dated February

1 10, 2015 from defense counsel, Attorney Nenner, to
2 Senior United States Probation Officer Leslie E.
3 Maxwell, who is also here. Good afternoon --

4 MS. MAXWELL: Good afternoon, Your
5 Honor.

6 THE COURT: And Exhibit A -- strike
7 that.

8 Exhibit B to the defendant's motion is
9 a -- some documents from Dr. Robert Sozzi, S-o-z-z-i,
10 M.D., a psychiatrist with Psychiatry Consultants,
11 P.A.; P.A. standing for Professional Association. And
12 there are two notes on the psychiatric visits with the
13 defendant dated March 19, 2012, and February 20, 2012,
14 together with an initial psychiatric evaluation dated
15 February 13, 2012. Those things are all included in
16 Exhibit B.

17 In Exhibit C, it is a copy of an
18 agreement to proffer facts in lieu of live testimony,
19 an agreement between the Government and the defendant
20 dated February 24, 2015.

21 Exhibit D is an untitled document that
22 has a silhouette of the back of a female from
23 shoulders up which was described in a little more
24 detail by me on the record on day one of the
25 sentencing hearing on March 10th.

1 Exhibit E is a four-paged untitled
2 document dated March 3, 2012 from Facebook with small
3 square pictures of someone named Louie Oudet, L-o-u-i-
4 e, last name O-u-d-e-t, which I describe on the record
5 in more detail on day one of the sentence hearing.

6 Exhibit F is a 13-paged document
7 entitled victim's phone records from March 2nd through
8 March 4th, 2012, which I described on the record on
9 the first day of the sentence.

10 Exhibit B -- I mean, Exhibit G consists
11 of six pages numbered pages 61 to 66 of an AT&T,
12 standing for American Telephone & Telegraph Company,
13 proprietary mobility usage records with a run date of
14 April 11, 2013 including telephone records for March
15 3, 4, and 5 of 2012 for telephone number area code
16 201, 993-0115 as described on the record by me on day
17 one of this sentence hearing.

18 Exhibit H is a document entitled
19 summary chart dated March 4 and 5 of 2012 concerning
20 text communications and voice telephonic
21 communications.

22 Exhibit I is a letter dated February
23 17, 2015 from Assistant United States Attorney, Albert
24 S. Glenn to defense counsel, Attorney David S. Nenner
25 concerning a summary of the interview of the minor

1 victim in this case, which interview occurred on June
2 5, 2013.

3 As required by Federal Rule of Criminal
4 Procedure 31(i)(1)(A) I will ask defense -- I will ask
5 Government counsel whether he has received a copy of
6 defendant's motion and the exhibits which I have just
7 enumerated.

8 MR. GLENN: Yes, Your Honor, I did
9 receive those.

10 THE COURT: Very well. The addendum to
11 the presentence report, which the presentence report
12 is dated January 29, 2015 and which report was revised
13 and updated on February 27, 2015. The addendum is
14 incorporated into the presentence report as page 18,
15 and it is also dated February 27, 2015.

16 And it indicates in certain paragraph
17 numbers in the original presentence report were
18 revised and updated. And it all indicates as was
19 stated on the record on the first day of the hearing,
20 that the Government and defense have no unresolved
21 objections to the presentence report. And both
22 counsel affirmed that on the record on March 10th,
23 2015.

24 We'll treat the -- we'll address and
25 deal with the motion for downward departure and/or

1 downward variance of the defense as part of the
2 sentencing hearing during which hearing, and at the
3 end of which hearing, right before we impose sentence,
4 each counsel will have an opportunity to make
5 sentencing statements or sentencing arguments to me,
6 and that during those arguments, the defendant can
7 argue in favor of his motions for downward departure
8 or variance. And the Government may argue its
9 position concerning those defense motions as well.

10 Mr. Nenner, does the defendant have any
11 witnesses to present at the sentence hearing today?

12 MR. NENNER: No witnesses, Your Honor.
13 People are here in support of him, but they do not
14 wish to testify.

15 THE COURT: Very well. Will your
16 client be exercising his right of allocution?

17 MR. NENNER: Yes.

18 THE COURT: All right. Mr. Glenn, will
19 the Government be presenting any sentencing witnesses
20 today?

21 MR. GLENN: No, Your Honor, we will
22 not.

23 THE COURT: Okay. Very well. Will the
24 Government be presenting any sentencing exhibits
25 today?

1 MR. GLENN: I don't believe so unless
2 something comes up during the course of argument which
3 requires that.

4 THE COURT: All right. Mr. Nenner, in
5 addition to the nine exhibits which I've already
6 identified, and which were attached to your motion,
7 does the defendant have any additional exhibits to
8 offer today?

9 MR. NENNER: Yes, sir.

10 THE COURT: And what would they be?

11 MR. NENNER: Judge, the first exhibits
12 that I would intend to offer, and I've already handed
13 a copy to the Government would be prison records
14 concerning my client's medical condition and
15 treatment. The reason that it was not attached to the
16 presentence memorandum was because I felt it was
17 prudent to have my client's signature and
18 authorization to allow him to share those records with
19 both the Court and the Government before I actually
20 did.

21 I realize that it was handed up to Your
22 Honor the other day, but I received it at the time I
23 handed it to you, and then thought about it a little
24 more and thought that I should have the written
25 authorization because of the nature of those records.

1 THE COURT: And we marked those records
2 as Defense Exhibit J?

3 MR. NENNER: That's fine, sir, with the
4 Court's permission.

5 THE COURT: Okay.

6 MR. NENNER: And then the other thing
7 is, or the last thing, Your Honor, is I sent yesterday
8 afternoon, and I did the Government with the record, a
9 statement that was taken from the FBI from the
10 victim's biological mother. And I did fax that to the
11 Court. I don't know if the Court received it,
12 hopefully they did. If not, I do have another copy
13 here for the Court, that's redacted.

14 THE COURT: All right. May I see my
15 law clerk?

16 (Pause)

17 THE COURT: We got nothing in addition
18 to your motion and memorandum and exhibits from your
19 office, although I believe my law clerk had a
20 telephone conversation with your secretary about
21 faxes, and your secretary indicated to my law clerk
22 that your fax machine had jammed, and she couldn't fax
23 anything to us. And so we got no fax.

24 MR. NENNER: Okay. I apologize for
25 that, Your Honor. I have a fax cover sheet, can I

1 approach and hand it to you?

2 THE COURT: Yes, you may. First, I'd
3 like you to hand the letter -- I'm sorry, the prison
4 records and medical treatment records of the defendant
5 to the court reporter, and we'll ask him to mark them
6 as Defendant's Exhibit J.

7 MR. NENNER: May I approach, Judge?

8 THE COURT: Yes, please. And let him
9 mark that and then we'll proceed. But just stand
10 there for a minute, Mr. Nenner.

11 (Pause)

12 THE COURT: Now, the other thing I
13 believe you have, Mr. Nenner, is a statement taken by
14 the FBI from the victim's biological mother?

15 MR. NENNER: Yes, sir. Just for the
16 record, the date of that statement is July 31st, 2013.

17 THE COURT: Okay. And you want that
18 marked as Exhibit K?

19 MR. NENNER: Please.

20 THE COURT: All right. We'll ask the
21 court reporter to mark the FBI statement as Defense
22 Exhibit K, then you may have a seat.

23 MR. NENNER: Yes, sir.

24 THE COURT: And then we'll ask the
25 reporter to hand the last two exhibits up to me.

1 Now, Attorney Nenner, are you offering
2 Defense Exhibits A through K into evidence?

3 MR. NENNER: Yes, sir, with the Court's
4 permission.

5 THE COURT: Any objection from the
6 Government?

7 MR. GLENN: No objection, Your Honor.

8 THE COURT: In the absence of
9 objection, Defense Exhibits A through K are received
10 into evidence.

11 (Defense Exhibits A through K received)

12 THE COURT: I believe I asked defense
13 counsel at the first hearing whether he had received a
14 copy of the presentence report on the record on the
15 first day of this hearing, and defense counsel
16 indicated that he had. Is that correct, Mr. Nenner,
17 you've received the presentence report?

18 MR. NENNER: I did, sir.

19 THE COURT: And did you discuss the
20 presentence report with your client, the defendant, on
21 a timely basis?

22 MR. NENNER: Yes, Your Honor.

23 THE COURT: And, Mr. Glenn, did the
24 Government receive the presentence report?

25 MR. GLENN: Yes, Your Honor.

1 THE COURT: Very well. As it stands,
2 the presentence report shows a total guideline offense
3 level of 29, and a criminal history category of 1,
4 which yields a guideline sentencing range of 87 months
5 to 108 months. I believe I mentioned that on the
6 first day of the hearing.

7 I think I also mentioned as a result of
8 the plea agreement between the Government and the
9 defense, the Government has agreed to dismiss Counts I
10 and II of the indictment which has been replaced with
11 a one count supplemental information and the defendant
12 is pleading to that one count supplemental information
13 in this matter.

14 And the indictment, if it had not been
15 dismissed, would have carried a mandatory minimum of
16 ten year's incarceration concerning Count II of the
17 indictment. But because the Government is going to
18 dismiss that indictment, there is no mandatory minimum
19 statutory sentence of incarceration in this matter,
20 although there is a mandatory minimum remaining
21 concerning supervised release. That would be a five
22 year or 16 month mandatory minimum period of
23 supervised release up to a lifetime of supervised
24 release that is applicable to the sentence of Mr.
25 Shaman.

1 I noted on the first day of the hearing
2 under Federal Rule of Criminal Procedure 23(f)(1) that
3 no objections were filed, as I've already stated a few
4 moments ago.

5 Therefore, I will give defense counsel
6 and the defendant each an opportunity to be heard to
7 comment on the presentence report and present
8 testimony or information of any type, and the
9 defendant will be permitted to exercise his right of
10 allocution. Other than the allocution part, I will
11 give the Government the same opportunity, that is to
12 be heard to comment on the presentence report and
13 present testimony or information of any type.

14 But initially I want to conduct a
15 colloquy with the defendant. Mr. Shaman, do you
16 understand that you have the right to remain silent at
17 this hearing. You don't have to say or do or present
18 anything. The only thing you have to do is answer my
19 questions truthfully. Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Now, in addition -- and if
22 you exercise your right to remain silent, I won't hold
23 that against you in any way, because that is your
24 right, do you understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: In addition to your right
2 to remain silent, however, you may if you wish testify
3 in this sentence hearing. And if you testify, you
4 would do so from the witness stand, which is to my
5 right and to your left in this courtroom as we are
6 facing each other. And you would testify under oath,
7 and you would testify in response to questions asked
8 of you by your attorney.

9 And then after your attorney's
10 examination of you was completed, the Government
11 attorney, Assistant United States Attorney Glenn could
12 ask you questions on cross-examination, that is, ask
13 you questions while you were still on the witness
14 stand and still under oath about your testimony.

15 Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: You may also call witnesses
18 in this hearing, whether or not you testify, to
19 testify to anything that might be relevant to the
20 matter of an appropriate sentence for you. And they
21 too could be cross-examined by Government counsel. Do
22 you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: In addition to that, you
25 may present exhibits, such as documents or other

1 objects to the Court, and as you heard, you have
2 already presented and offered into evidence 11
3 exhibits marked Defendant's Exhibits A through K,
4 which I have described on the record, but you could
5 indeed offer other exhibits as well if they were
6 relevant to sentencing here. Do you understand those
7 things?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Now, whether or not you
10 testify and whether or not you offer exhibits, you
11 would also have the right to make an informal
12 statement to the Court. If you make such an informal
13 statement, you would do so not from the witness stand,
14 but from where you were seated at counsel table.

15 You also would make your statement in
16 your own words, rather than in response to questions
17 from your attorney. And ordinarily, if you make such
18 an informal statement, the Government lawyer would not
19 be permitted to cross-examine you on that informal
20 statement. Do you understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: We call such an informal
23 statement the defendant's right of allocution. Now,
24 your attorney has told me that you do not wish to
25 testify formally from the witness stand; is that

1 correct?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: He also told me that you do
4 not wish to present witnesses today; is that correct?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: He told me that other than
7 the 11 witnesses -- exhibits you did present, that you
8 don't intend to present additional exhibits; is that
9 correct?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: But finally he told me, you
12 do wish to exercise your right of allocution. That
13 is, you do wish to make an informal statement to the
14 Court before I decide on a sentence and impose
15 sentence; is that correct?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. Now, is the
18 time for you to make that statement. Seated where you
19 are, tell me in your own words what you would like me
20 to hear and consider before I sentence you.

21 THE DEFENDANT: Your Honor, I take full
22 responsibility for my horrible behavior. I hate
23 myself for this. I have a daughter now, and if
24 someone behaved toward my daughter as I did with this
25 young girl, I would not be able to deal with it.

1 This has ruined my life. And I am
2 ashamed to no end. And my conscious weigh on me like
3 a black cloud. I hope I caused her no long damage
4 (sic). I hope one day I can be forgiven by society
5 and myself. I hope to get my life back on the path.

6 I hope to get my life back on the path.
7 I (indiscernible), thank you, Your Honor, for whatever
8 leniency you may grant me.

9 THE COURT: All right. Thank you.

10 All right. Now, we've arrived at the
11 point in the proceedings where each lawyer will have
12 an opportunity to make a sentencing statement to me,
13 and we will hear first from defense counsel from the
14 podium, and then following Mr. Nenner's statement,
15 we'll hear from Government counsel, Assistant United
16 States Attorney Glenn from the podium.

17 You may approach the podium, Mr.
18 Nenner, and make defendant's sentencing statement.

19 MR. NENNER: Yes, sir. Before I get
20 into the statement itself and argument before the
21 Court, I would like permission just to put the names
22 on the record of family members who are here.

23 THE COURT: You may do that.

24 MR. NENNER: Thank you. The first
25 individual here, Your Honor, and I'll ask them to

1 stand up as I say their name and then sit back down.

2 THE COURT: Okay.

3 MR. NENNER: Summer Shaman is my
4 client's wife. It's a young lady that he met after
5 this incident, Your Honor, and married her, and as
6 Your Honor knows from the presentence report, he has
7 -- they have, I should say, a young child who's
8 approximately one and a half years old.

9 In addition to his wife, Your Honor, I
10 have two of his sisters here, one is Eman Shaman (ph).

11 THE COURT: How do you spell Eman?

12 MR. NENNER: E-m-a-n. And his second
13 sister is also here, and I'm not going to do justice
14 to her first name, so maybe I'll just spell it if
15 that's okay with the Court.

16 THE COURT: Go ahead.

17 MR. NENNER: K-h-o-l-o-u-d, Shaman.
18 And his brother-in-law is also --

19 THE COURT: I was still going --

20 MR. NENNER: Sure.

21 THE COURT: Okay. You said the sisters
22 were here and would stand, I haven't seen a female
23 stand.

24 MR. NENNER: I'm sorry, Your Honor,
25 apparently they have babies and --

1 THE COURT: Okay. They're not in the
2 courtroom at this time?

3 MR. NENNER: They're not in the
4 courtroom, I thought they were.

5 THE COURT: Okay.

6 MR. NENNER: They are outside the
7 courtroom.

8 THE COURT: Okay. Now, is the other
9 person, the brother-in-law, did you say?

10 MR. NENNER: Yes, he's the one that
11 just stood up, Your Honor.

12 THE COURT: Okay.

13 MR. NENNER: He's holding a baby in the
14 back of the room.

15 THE COURT: Right. And his name is?

16 MR. NENNER: First name is, Ra'ed, it's
17 R-a-'-e-d and I'm going to spell the last name A-b-b-
18 i-r-m-a-i-l-e-h.

19 THE COURT: All right. Thank you.

20 MR. NENNER: Yes, sir.

21 Judge, let me start out by clarifying
22 something if I may, because I also had the opportunity
23 to read the Government's presentence report, or I
24 should say presentence memorandum which obviously
25 addressed some of the issues that I'm intending to

1 address to this Court right now. And the first thing
2 I wanted to say to the Court that in no way, and I
3 want to make this abundantly clear is Mr. Shaman
4 trying to evade responsibility of this crime. In
5 fact, it is Mr. Shaman who pled guilty before this
6 Court, thereby admitting responsibility for his crime.

7 It is also Mr. Shaman who agreed not to
8 compel a young victim to come into this courtroom, not
9 only to not testify at a trial, but also not to have
10 to appear today or the other day before this Court at
11 sentencing.

12 And his guilty plea, Your Honor, and
13 his offense is clearly an accurately set forth in the
14 plea agreement and his admissions before the Court at
15 the time he entered his plea to the Court. And
16 there's no question that when he traveled to New
17 Jersey, which was supposed to be on a trip to South
18 Carolina eventually, that he had the intent to have
19 illicit sexual contact with this 14-year old girl,
20 there's no question about that.

21 And I'm not here to try to minimize
22 that, Your Honor. But what I am here, I think it's
23 important that the Court understands this, is that the
24 Court should know all the facts, it should know the
25 totality of the circumstances of when this happened,

1 why it happened, and how it happened.

2 And this is the situation. Mr. Shaman
3 committed a heinous crime, there's no question about
4 that, it was a 14-year old girl, but this 14-year old
5 girl, Your Honor, and I want to say this as politely
6 as I can was going on 30 years of age, to put it --
7 she's somebody who's beyond her numerable age of 14
8 years old. And that's not said to excuse what Mr.
9 Shaman did.

10 Again, it's to help explain why this
11 trip to New Jersey occurred, and for the Court to have
12 the understanding of everything that happened. And in
13 addition to her, we have her biological mother, Your
14 Honor, who was frankly a big part, a big part, a lot
15 more than what she admitted to the FBI, and I want to
16 talk about her statement to the FBI in a second, but
17 she was a big part of a conspiracy, if you'd like, or
18 an agreement between her and her biological daughter
19 to try to relocate her from outside of Allentown to
20 South Carolina. And there's no question about that,
21 Your Honor.

22 And that's why all these phone records
23 and text records, and things I believe are important
24 for the Court to understand. So let me start out by
25 saying that on March 3rd of 2012, before the victim

1 had computer chatroom contacts with my client, because
2 if you recall, if you read what I submitted, my client
3 had started to really communicate with her on, at
4 least from what I have, from -- on March 3rd, 2012.

5 But before those communications, the
6 victim in this case was also communicating, as she did
7 often frankly on a daily basis at all hours of the
8 morning, all hours of the day, was also communicating
9 with other individuals.

10 One of those individuals whose name I
11 will not -- again because I don't know her age, I
12 don't want to bring it up not knowing her age, but
13 there was a female who she communicated with, who at
14 least in her communications indicated that she had a
15 romantic interest in this female.

16 And March 3rd, 2012 at about 1:54 p.m.
17 and some seconds, and again, this is UTC time, and
18 this is before all these conversations with my client,
19 Mr. Shaman, the victim wrote to her, "I'm running away
20 to North Carolina." And that's a statement that
21 appears in one of the e-mails that the Government had
22 provided to me. And there's a lot of e-mails, Your
23 Honor.

24 So before she even begins to start
25 communicating in a chat room with my client, she

1 indicates that there's an interest on her part to run
2 away to South Carolina. In addition, and Your Honor
3 has this, on March 2nd, 2012, the day before this,
4 there are a total of, I believe it's nine texts,
5 between the biological mother and the victim.

6 Now, obviously I can't tell you what
7 the content of that was, Your Honor, but what I can
8 tell you is that there's nine of them proceed in a day
9 where there's approximately 48 to 49 texts, and that's
10 -- and when I say preceding day, I mean March 4th of
11 2012 when the plans or the decision on how she was
12 going to be relocated started to come into a formal
13 plan.

14 Now, Your Honor, on March 4th of 2012,
15 which is the day that this victim was taken from or
16 left her home, I should say, and went to New Jersey,
17 as I said, there's 40, approximately 49 texts going
18 back and forth before the biological mother and the
19 victim.

20 What's significant about that is when
21 you read the biological mother's statement to the FBI,
22 she indicates that she had no texts with her daughter,
23 and that she -- and I think if I remember reading it
24 correctly she said something to the effect that she
25 was on a certain kind of plan, and she didn't want to

1 run up the bill, but the physical evidence in this
2 case, the phone records seem to defy that statement.

3 Again, I won't go through each
4 individual time, unless the Court asks me to what was
5 -- you know, when it was and what was said, but I
6 believe that's significant, the texts on the afternoon
7 and morning before the victim was picked up outside of
8 her house.

9 Now, there are also calls on March 4th
10 and these are actually telephone calls, voice calls
11 between Mr. Shaman and the victim, again on March 4th,
12 2012. One as a -- and I said substantiated calls
13 because these are all calls that are in excess of five
14 minutes. There was more than that, sir, but some of
15 them were so short, that I don't know that there was
16 actually contact, so I didn't want to represent to the
17 Court that there were.

18 The four calls that occurred on March
19 4th of 2012 were at 1:56 p.m., 4:00 p.m., 5:18 p.m.,
20 5:43 p.m. Of most significance, Your Honor, when you
21 analyze the calls, is the timing of some of these
22 calls, which belie what the biological mother said to
23 the FBI.

24 There is a call actually between the
25 biological mother and my client, there's 19 total

1 calls on March 4th of 2012; again, between the
2 biological mother and my client. At 6:16 p.m. on
3 March 4th, 2012 when my client was traveling from his
4 home town in New Jersey to outside of Allentown to
5 meet with the victim, there's a call that is almost an
6 hour long.

7 And my client, according to the police
8 reports, he meets up with the victim outside of her
9 house at 7:15 p.m. on that same date. Our contention,
10 Your Honor, Mr. Shaman's contention is that during
11 that hour, he was talking to the biological mother
12 about a number of things. One was her desire to have
13 my client assist her in bringing the victim to South
14 Carolina. Two was a discussion about potential
15 compensation for doing that.

16 I note that the Government says that
17 they interviewed the biological mother and she denied
18 that. Well, she denied a lot of stuff, and it turns
19 out not to be accurate compared to what the phone
20 records show us.

21 But in addition to that, there was
22 discussions about how my client was to assist in
23 transferring the victim to South Carolina. There was
24 discussions about whether he was actually going to
25 drive there. There were discussions about putting her

1 on a train in Newark, New Jersey. There were all of
2 these discussions that went on.

3 Now, there's also telephone calls on
4 March 4th not only from the victim's family -- excuse
5 me, from the victim's phone, cell phone, but also from
6 my client's cell phone after she threw the phone out
7 of the window after police made notification to her
8 that they were looking for her.

9 There's a total of three calls on March
10 4th of 2012 to the victim's cell phone number. And
11 again, because I do think it's important, the totality
12 of the circumstances here, we talked a little bit
13 about the calls from the mom to the client, I told you
14 there was a total of 19 calls.

15 Some of them actually occurred on March
16 5th of 2012, Your Honor, and this is another point
17 that I think is important for the Court to understand.
18 In the biological mother's statement, she made it
19 clear that she never initiated a telephone call to my
20 client on the evening or the early morning hours on
21 the day of March 5th, 2012.

22 Well, in fact, when you go through the
23 records to see the outgoing and incoming and where the
24 calls are coming from, there is at least three calls
25 that were initiated by the biological mother. They

1 are on March 5th, 2012 at 5:17 a.m., this was a call
2 that lasted 8 minutes, 27 seconds. There is another
3 call from the mother on March 5th, 2012 at 8:35 a.m.
4 for 33 seconds. And then there's another one on March
5 5th, 2012 at 1:19 p.m. --

6 THE COURT: Well, 8:35 a.m. you said.

7 MR. NENNER: Yeah, 8:35 a.m.

8 THE COURT: Okay. That was how many
9 seconds?

10 MR. NENNER: That was 33 seconds, sir.

11 THE COURT: Okay. And then the third
12 one you said was what?

13 MR. NENNER: March 5th, 2012, another
14 call initiated by the biological mother at 1:19 p.m.
15 that lasted three minutes and 44 seconds. Now,
16 they're only the calls that were initiated by the
17 biological mom.

18 In addition to those calls, there are
19 calls on March 5th, 2012 that were initiated by my
20 client from his cell phone to the biological mom. And
21 they're not long, so I'll give them to you, with the
22 Court's permission.

23 March 5th, 2012 at 1:15 a.m., a call
24 that lasted 3 minutes, 50 seconds; March 5th, 2012 --

25 THE COURT: I'm sorry, what time was

1 that call?

2 MR. NENNER: 1:15 a.m. in the morning.

3 THE COURT: And how long did you say it
4 lasted?

5 MR. NENNER: 3 minutes, 50 seconds.

6 The next call --

7 THE COURT: And these are calls from
8 the defendant to the victim's mother?

9 MR. NENNER: Yes, biological mother,
10 yes, sir.

11 THE COURT: Okay.

12 MR. NENNER: The next one was initiated
13 by Mr. Shaman to the biological mother, was March 5th,
14 2012 at 5:02 a.m. in the morning.

15 Now, I can't tell the Court on those
16 particular two times who was talking to the biological
17 mother, in other words, because as I indicated the
18 victim's phone was thrown out the window earlier in
19 the evening, and clearly there were some conversations
20 between the victim and her biological mother utilizing
21 my client's cell phone.

22 There's two more calls, sir. One is --
23 excuse me, one more call.

24 THE COURT: And this a call also
25 initiated by the defendant to the victim's biological

1 mother?

2 MR. NENNER: Yes, Your Honor.

3 THE COURT: Okay. Go ahead.

4 MR. NENNER: March 5th, 2012 at 5:48
5 p.m., and this was a call that lasted 22 minutes and
6 53 seconds. This is after my client was released from
7 custody, after being interviewed by local law
8 enforcement.

9 The reason that I think this is
10 important, if you look at the call at 8:35 a.m. there
11 is something in the mother's statement where she says
12 she actually overheard the police questioning Mr.
13 Shaman when he was being interviewed. And what she
14 indicates is that my client contacted her, and I would
15 respectfully suggest to the Court, that given the
16 timing of the interview which happens sometime before
17 8 a.m., the call that -- the only call that I could
18 see that would relate to the time is the one at 8:35
19 a.m. for 33 seconds that we talked about, which was
20 initiated from the biological mother to my client.

21 And my client has indicated to me that
22 she was on the phone and did contact him when he was
23 being interviewed by law enforcement.

24 So I think that the phone records,
25 whether they're texts or they're actual voice calls,

1 clearly make out a situation much different than the
2 biological mother would have you believe. And I think
3 that the young victim here clearly had contemplations
4 at least of leaving Allentown to go to her biological
5 mother as I indicated, well before my client became
6 involved in her, and I think that's substantiated, as
7 I said, by another text with another person that
8 occurred before the times she starts communicating
9 with my client.

10 Now, again, I'm not here to smear the
11 victim in this case, that's not my goal here, but I
12 have to respond, Your Honor, respectfully, to some of
13 the Government's accusations in their presentence
14 memorandum.

15 For instance, and I don't know what the
16 Government means by that, so I'm going to tread
17 carefully as they say, but the Government represents
18 that Mr. Shaman violated the sexual innocence of a 14-
19 year old girl, and that he accomplishes through
20 enticement using the internet.

21 Your Honor, my response to that is, I
22 don't know if that's true, and you don't know if
23 that's true, and let me say why I say that as
24 carefully as I can. As I indicated to this Court,
25 there are numerous communications from this victim to

1 other individuals besides Mr. Shaman at the same time
2 period, I'm talking about on March 2nd, March 3rd and
3 after that, where she is having very explicit
4 conversations of a sexual nature to other individuals,
5 including females and males, Your Honor.

6 She indicates in some of those, and I
7 don't know if it's true, but this is her words, that
8 she was bisexual, she also indicated in one particular
9 text that during one of the summers or that summer at
10 summer camp, her and some other girls put on a sexual
11 display for the boys in the camp.

12 Now, I say that to the Court only in
13 response to the Government, when they indicate that
14 Mr. Shaman should be hit hard here, and should be hit
15 at the top level of the guidelines because of the
16 psychological damage he did to this 14-year old girl.

17 And my response to that is, I don't
18 know how we know that because we have never met her,
19 we have never heard from her. There's nothing that
20 was ever disclosed to me in this process, that
21 indicated that she had any kind of psychological
22 damage from what happened.

23 Now, I think we can take for granted
24 that a 14-year old girl who has sexual contact with
25 somebody of 28 years of old, clearly that's going to

1 affect her, and clearly that's going to have
2 impressions upon her, and not good ones. But to say
3 that he stole her innocence, given the language and
4 her communications with other people, and given things
5 that she claims she did, whether -- I can't attest to
6 whether they're true or not, I think it's a far leap
7 to say that he violated her sexual innocence. I just
8 don't think the Court knows that. And that's why I
9 responded to it.

10 As far as the enticement part, well
11 I'll leave that up to Your Honor. There's a clear
12 indication in the first communications between Mr.
13 Shaman and this young victim that she was a
14 participant in at least the conversations.

15 She indicated that she liked to be
16 touched, she indicated that she liked to be touched
17 all over, she indicated that if she would let Mr.
18 Shaman, and that's her words, if I let you, I would
19 probably let you touch me all over.

20 That was her conversation within this
21 conversation. And, Your Honor, I also think it's
22 important to realize that even though there's no doubt
23 that Mr. Shaman set out to have a physical sexual
24 contact with this girl, the part where I think it gets
25 a little vague and a little hazy as to what his intent

1 was as to where it would happen and how it would
2 happen.

3 Because I think if you read the first
4 day, and I'm talking about March 3rd, 2014, their
5 contacts with each other, it's clear that he was ready
6 to come to her, to her hometown to be with her. It's
7 also clear from this case, with all due respect, that
8 the contact that ultimately occurred in this case,
9 occurred inside in his vehicle.

10 So I don't think you could look at the
11 facts here and say that it was so important for Mr.
12 Shaman to take her to New Jersey to accomplish this
13 illegal conduct. Now, I know it happened that way.
14 But my point is simply that when I talk about a
15 downward variance, and the responsibility who caused
16 the internet -- the excuse me, interstate travel in
17 this case, I don't know how you could look at the
18 totality of the circumstances and say that the mother
19 and this -- and the young victim herself were clearly,
20 clearly had orchestrated this plan to get this victim
21 somehow to South Carolina.

22 And clearly while the victim had the
23 ability to say to Mr. Shaman on March 3rd that don't
24 come, I'm not going to see you, which he didn't come
25 and didn't see her, she certainly worked the next day,

1 if you look at the volume of these texts, and the
2 volumes of these calls to the biological mother, and
3 back and forth, clearly she had a plan and a motis
4 operandi to use Mr. Shaman to take her out of the
5 State of Pennsylvania to travel to South Carolina.

6 THE COURT: You're talking about the
7 mother or the victim having a clear plan?

8 MR. NENNER: I'm talking about both,
9 the biological mother, and I'm talking about the
10 victim. And I think it bears out the victim because
11 of what she is texting before she's talking to my
12 client about what her intent is, which is to go live
13 with her biological mother.

14 It's also clear from her communications
15 with my client that she represented certain things to
16 him, I don't know if they're true or not, about her
17 relationship with her adoptive parents. She said that
18 they were physically abusive to her, she hated them.
19 She indicated, as her biological mother did in her
20 statement to the FBI, that she was -- portrayed
21 herself to be a victim of her adoptive parents, and
22 all of these things, Your Honor, were communicated to
23 Mr. Shaman.

24 So it doesn't absolve him of his
25 conduct; however, when looking at an appropriate

1 sentence for that conduct, an appropriate sentence
2 that will punish him and protect society, but at the
3 same time realize that he was not the only person who
4 was involved in promoting the removal of this young
5 girl, I think the fairness is that these guidelines,
6 whether you start at the bottom or the top or
7 somewhere in the middle, overstate his criminal
8 conduct under these circumstances.

9 And I say that to the Court because I
10 tried to analyze it, as Your Honor knows, as a
11 situation which we commonly refer to as statutory
12 sexual assault, which is a crime obviously that he's
13 also guilty of, in terms of her age and things like
14 that.

15 However, statutory sexual assault does
16 not have the gravity in terms of sentencing as the
17 charge that he and this ultimate sentence he's going
18 to be punished for here today, it just doesn't. If
19 you go to the state, it's an automatic five to ten
20 years, that's a mandatory for a first time offender.

21 I believe, if I calculate it correctly,
22 the guidelines in the federal system are actually a
23 little less. I think they're like 48 months, even
24 with the enhancements for the computer and things like
25 that.

1 But having said that, Your Honor, I'm
2 just asking the Court to look at the total situation
3 here and understand that this interstate travel was
4 promoted by the victim as well as her biological
5 mother.

6 I'm also asking the Court and the
7 Government provided this before sentencing to me in a
8 letter, saying that the biological mother actually
9 promoted the sexual contact between my client and the
10 victim, in a letter where she -- where the victim told
11 the Government that her mother said to have sex with
12 Mr. Shaman.

13 You'll note from the mother's interview
14 with the FBI, that she denied that. That she said,
15 oh, I never said that, I said something that older
16 guys would want that, okay.

17 So, you know, yes, Mr. Shaman is here
18 before this Court, he's very humbled, Your Honor, he
19 understands he's going to be punished, his family is
20 here, his wife's here, and they know, he knows when he
21 pled guilty that he was going to go to jail, there's
22 no question about that.

23 And as Your Honor aptly reminded me at
24 the time of the plea, because of the class of this
25 offense, Your Honor had no choice but to incarcerate

1 him immediately, and that's in fact what you did. The
2 Court was courteous enough I believe to allow him to
3 take a day or two to get his affairs in order, and Mr.
4 Shaman does appreciate that as I do.

5 But having said all that, when you look
6 again at all the parties who were involved here and
7 how this happened and the way it happened, and the
8 numerous calls for the mother or the victim, for that
9 matter, to suggest to this Court, well, we really
10 didn't have a plan, Mr. Shaman just picked me up and
11 took me to New Jersey, okay, and that's where it began
12 and end. It defies logic, it defies the physical
13 evidence in this case.

14 And the contradictions between the
15 mother's statement and the records that I've put into
16 -- that I've given to this Court clearly show a
17 different pattern of behavior, not only by the victim,
18 but by the biological mother.

19 And I just think in fairness, and
20 that's what we're here about, a fair sentence and a
21 sentence that obviously solves or promotes the goals
22 of the federal sentencing guidelines, as well as the
23 Congress and the statute.

24 I think it behooves the Court, with all
25 due respect, to take into account again the

1 overreaching, if you will, or the behavior, or the
2 pattern of conduct by another adult, meaning the
3 biological mother, and also by the victim who, in many
4 ways, acted like an adult.

5 So, Your Honor, again this is not about
6 asking you to, you know, let him walk out of the
7 courtroom. He knows that's not going to happen. It's
8 about an appropriate sentence given the circumstances
9 of this case.

10 Now, if I can shift gears for a second.
11 Mr. Shaman -- I also filed a motion for downward
12 variance as the Court knows, and I worded it basically
13 on his psychological issues, as well as some of the
14 things he's experienced in life himself. And I know I
15 put it as a category, not one item, but it's the
16 totality of the items, Your Honor.

17 And what I want to say about that
18 initially, Your Honor, is that Mr. Shaman, as Your
19 Honor knows comes from age 12 to approximately I
20 believe it was 19 or 20, lived with his biological
21 father in the country of Jordan. And he was exposed
22 to a lot of things which citizens of this country
23 often refer to as abusive behavior, as well as maybe
24 cultural norms that are not recognized here, and let
25 me highlight that.

1 He was -- when he went back to be with
2 his father, with his mother, and his siblings in
3 Jordan, it was not -- it was a very difficult
4 experience for him because his father, and I've
5 indicated to this Court, who was much older than his
6 mother, I believe his mother was in her young teens
7 when she married his biological father, obviously
8 underage by our standards, and also has a sister who's
9 not in the courtroom who was also given away, and I do
10 mean given away at a very young age, teenage years.

11 He was exposed to certain things that
12 left a horrible mark on him, and I say that because
13 his father was not -- was very physically abusive,
14 Your Honor. His father used to lock him and his
15 siblings at times up in their house in Jordan for days
16 at a time.

17 At one point my client even went to the
18 American consulate to file a complaint. My client
19 himself, Your Honor, as we often see in these types of
20 cases was also a victim of sexual abuse. He was a
21 victim of sexual abuse from a cousin of his, as well
22 as his father's second wife.

23 And I should also point out to the
24 Court that his mother would often leave him and his
25 siblings with the father, in fact, she came back to

1 the United States before they did and left them there.
2 Ultimately, as I said, he came back when he was about
3 19 years of age.

4 To sit here and say that, you know,
5 what occurred to him didn't have an impact on him and
6 a serious impact on him is just ignoring all the facts
7 in this case, and ignoring what he went through as a
8 child, young adolescence, before he even came back to
9 this country, you know, when he was again an older
10 teenager, 19 or 20 years of age.

11 Your Honor, he certainly is an
12 individual -- he started his own business as Your
13 Honor knows, he was in the moving business. One of
14 the businesses was a failure. At the time he was
15 arrested in this case, he was actually doing pretty
16 well. It was his business, he took on a wife, as I
17 described, and he had a child. Obviously that
18 business is now defunct because of his situation and
19 where he is.

20 I can tell you that his wife, Your
21 Honor, has suffered economically. She's living with
22 her brother now with the child. She is employed. In
23 fact, she works for the New Jersey Correctional
24 Department. But she has to have childcare, and as I
25 said, she doesn't have her own place to live and their

1 child also lives with a brother.

2 Your Honor, before this incident, Your
3 Honor, and again I want to be specific about the exact
4 date, before this incident, in -- on September 25th of
5 2011, Your Honor, Mr. Shaman was involved in a very
6 serious motor vehicle accident in the State of
7 Florida. He was struck, his best friend was struck
8 who was killed, instantly killed, and this was while
9 they were moving items to the State of Florida from
10 the State of New Jersey.

11 That was -- that traumatized him. He
12 feels a lot of guilt about that. He clearly was
13 seeking treatment with a psychiatrist because of that
14 event, and because how it left him in terms of his
15 behavior. He complains about headaches all the time,
16 you can see that from the prison records. He's been
17 on and off medications. A lot of them have not
18 worked.

19 The last time I saw him in
20 Philadelphia, one of his eyes was completely closed,
21 and he couldn't see out of it because of the effect of
22 one of the medications he was given at the prison.

23 One of the things that he has a concern
24 about and I do, and I ask the Court to fashion this in
25 your sentence, is that he gets appropriate medical

1 treatment wherever his ultimate destination is, Your
2 Honor.

3 Again, it's not one thing, it's a
4 combination of psychological trauma he suffered at a
5 young age, and the things he had to witness, and the
6 things he went through that he's asking the Court to
7 at least take that into consideration when fashioning
8 an appropriate sentence.

9 And I indicated to the Court that I
10 thought, Your Honor, this is just a lawyer obviously
11 being a zealous advocate for his client, I'm not
12 suggesting to you that 4 to 8 years is appropriate. I
13 did that because it was somewhere in between the New
14 Jersey 5 to 10 mando, and what I believe the federal
15 guidelines would be for a statutory rape situation.

16 But what I am suggesting, and I will
17 leave it at this, Your Honor, that when you begin,
18 just look at everything that was involved and how this
19 crime occurred and what occurred. And, you know,
20 really it comes down to, and I hate to say it like
21 this, it comes down to three people who used each
22 other for their own personal motives, their own
23 personal -- I'm at a loss for a word, but their own
24 personal concerns that the risk and expense of
25 everybody else, and that goes for Mr. Shaman too.

1 And again, I don't want to leave it
2 saying, I'm not here saying that, you know, he
3 deserves, you know, to walk out the door because he
4 didn't do anything that bad. He did something awful,
5 okay, and he has a family that he should've known,
6 from his sisters -- his sister, excuse me, and his
7 mother, you know, that an 11-year old is a child,
8 whether it's this country or any other country, that's
9 just the facts. And he should be punished for that.

10 And I say this with all, you know, my
11 deepest, my deepest impassioned way that I can do
12 that, Your Honor, and ask you to at least fashion a
13 sentence that under the circumstances of this case
14 meet all the sentencing goals and show a fairness not
15 only to society, and not only to the victim in this
16 case, but a fairness to Mr. Shaman, given how this
17 unfolded, Your Honor. Thank you, sir.

18 May I step back?

19 (Pause)

20 THE COURT: All right.

21 (Pause)

22 THE COURT: Are you finished with your
23 sentencing statement, Mr. Nenner?

24 MR. NENNER: I certainly am, Your
25 Honor, I hope you were able to hear it.

1 THE COURT: I heard it.

2 MR. NENNER: Thank you.

3 THE COURT: All of it. All right. If
4 the defense is through, Government counsel may
5 approach the podium and make the Government's
6 sentencing statement.

7 MR. GLENN: Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. GLENN: First, we appreciate the
10 fact that there are family members here supporting Mr.
11 Shaman, and we think that's important for any
12 defendant to have the support of family here.

13 I'd like to address several of the
14 points that Mr. Neman raised during -- I'm sorry, Mr.
15 Nenner raised during his arguments, Your Honor.

16 Mr. Nenner's first point and argument
17 was for a downward departure. The downward departure
18 would be under Section 5(k) 2.10, I believe and which
19 refers to the victim contributing to the offense here.

20 I'd like to suggest to the Court, Your
21 Honor, that this is not applicable, this departure
22 guideline that Mr. Nenner has set out in his plea memo
23 and argued today. The guideline itself talks about a
24 victim's wrongful conduct, which contributed to the
25 offense.

1 I would first suggest to Your Honor
2 that there really isn't wrongful conduct here by the
3 victim toward Mr. Shaman. The guideline itself is
4 generally conceived and applied for acts of violence
5 when a defendant may have a defense, a self-defense
6 type defense, saying he was provoked or some
7 circumstance that the victim did caused him to do that
8 act.

9 And the guideline itself says that
10 generally that this will not be applicable in non-
11 violent offenses. Obviously, I don't think Mr. Shaman
12 is claiming that his sexual acts here were caused by
13 the victim, rather he is making a larger argument
14 concerning the overall conduct of the victim and the
15 biological mother because of the victim's desire to
16 leave her adoptive parents.

17 So really the guideline just really
18 doesn't apply. The considerations the Court is
19 supposed to take into account include the size and
20 strength of the victim, and other physical
21 characteristics compared with the defendant, the
22 persistence of the victim's conduct and efforts by the
23 defendant to prevent confrontation, the danger
24 reasonably perceived by the defendant, including the
25 victim's reputation for violence, the danger actually

1 presented by the defendant -- to the defendant by the
2 victim, other relevant conduct by the victim that
3 contributed to the danger presented, and the
4 proportionately and reasonableness of the defendant's
5 response to the victim's provocation.

6 The guideline itself says it will
7 usually not be relevant in non-violent offenses, and
8 say it will ordinarily not be sufficient toward
9 application in a certain guideline which are criminal
10 sexual abuse guidelines. Now, those aren't the
11 guidelines we're applying here, but I suggest that the
12 intent behind that is that when there's a criminal
13 sexual offense as we have here, this is not a
14 guideline to use.

15 So in the first instance, Your Honor,
16 we would argue that it's just simply not an applicable
17 guideline and the Court should reject the defendant's
18 request for a departure and deny that motion.

19 Now, with respect to whether this is
20 mitigating the question of mitigation is, of course, a
21 significant portion of Mr. Nenner's argument. I would
22 suggest to Your Honor that it really is not mitigating
23 here.

24 This has a sound of the defendant
25 blaming the victim for the crime that he committed.

1 We appreciate the fact that the defendant accepts his
2 responsibility here for the sexual abuse of the minor
3 victim, and that's very important, and important for
4 the Court's consideration in sentencing.

5 The defendant has been given three
6 levels off of his guideline range in recognition of
7 his acceptance of responsibility. But here, the
8 defendant is claiming that because -- and Mr. Nenner
9 spent a great deal of time talking about the
10 biological mother, her phone calls with Mr. Shaman,
11 the calls between the victim and the biological
12 mother.

13 We agree, Your Honor, that at that
14 time, this young 14-year old teenager had a desire to
15 leave her parents, her adoptive parents. But I think
16 the -- I think it's important to understand that in
17 the context that she's 14 years old, and just 14. Her
18 birthday was just the month before this.

19 She's just 14, a young teenager, and
20 seems to have some disagreement with her parents. Is
21 that unusual? I suggest not. She happens to have a
22 biological mother who lives in South Carolina. She
23 sees that as an avenue away from her parents, who seem
24 to be imposing some level of discipline or control
25 that she doesn't seem to think she any longer needs in

1 her life.

2 So she's seeking to go there. Her
3 biological mother, for whatever reasons, is not
4 discouraging this. But, Your Honor, this is a
5 circumstance that Mr. Shaman takes advantage of. He's
6 interested in this minor victim for sexual reasons.

7 He first comes upon her on a dating
8 site, a dating site being one where you look for some
9 romantic interaction. Now, granted, she represented
10 she was 21 on that site in her profile; however, she
11 soon told the defendant that she was 14, and one of
12 the early conversations is the one we have the
13 transcript of from Facebook on March 3rd.

14 And one of the first thing she types on
15 that evening is, "You know I'm 14, right?" This
16 doesn't dissuade Mr. Shaman and he continues in his
17 conversation.

18 Mr. Nenner talked about the back and
19 forth about being touchy. Well, Mr. Shaman was the
20 one who initiated that line of conversation. He's the
21 one who starts by saying, "So you like to be touched
22 and you're a touchy person," at line 22. And there's
23 a back and forth on this, but he says that "I'm touchy
24 too." He asks, "Where do you like to be touched at,"
25 and he says, "I'm sure you will let me touch you

1 everywhere."

2 Now, she has responses, which she's
3 somewhat flirting with him, true, but he continues to
4 press that point indicating his interest, what he
5 wants to do from the very beginning.

6 It's true, the victim had a desire to
7 leave her parents and go to South Carolina. Mr.
8 Shaman takes advantage of this. He uses this to his
9 own purpose. In that March 3rd conversation, the
10 defendant declined -- I'm sorry, the victim declined
11 to have Mr. Shaman come over to her house.

12 Although he tried a number of times to
13 persuade her to do that. He said in that
14 conversation, "And I'm coming to you now LOL," at line
15 20, "I swear I will take you if you want me to," line
16 24, "I'll come now if you want me to," line 29, "Do
17 you want me to come get you now?" line 33, "I'm not
18 joking, I'll come," line 37, "What's your address and
19 I'm come now," lines 42, "I'm talking for real, I
20 ain't playing, I'll come get you, you ready?" And
21 "What you going to tell your parents?"

22 So he's the one who's pushing to see
23 here. And she says no, she says no that night. But
24 what changes between that night and Sunday night,
25 March 4th, when he does go to get her, this plan to go

1 to South Carolina.

2 This is the way that the defendant
3 manages to get the defendant (sic) out of his house
4 and into her car. He speaks with her, he speaks with
5 the birth mother, he goes along with this plan. He
6 takes advantage of the plan that she -- the victim has
7 to go to South Carolina and uses it to his advantage,
8 by agreeing to be of some service and going to South
9 Carolina, taking the victim there. He gets her into
10 his car and he takes her to New Jersey.

11 So, Your Honor, the fact that the
12 victim and the birth mother were talking about the
13 victim going to South Carolina to satisfy the victim's
14 desire to have, what she thought, might be a better
15 place to live, is not something that's wrongful
16 conduct, it's not something that was wrongful as to
17 Mr. Shaman, it didn't hurt him one way or the other.
18 It was something he took advantage of. And there's
19 really no mitigation to that.

20 There's nothing in that circumstance to
21 mitigate the offense that Mr. Shaman has committed
22 here. So I think it's really not -- it seems that Mr.
23 Shaman, in some sense, is blaming the victim for the
24 offense, although he does take responsibility, and we
25 believe there's no mitigation in anything related to

1 the victim and the birth mother discussing a trip to
2 South Carolina. We think that's just simply
3 irrelevant in any mitigation. And, in fact, is
4 somewhat aggravating as to Mr. Shaman because of his
5 taking advantage of these circumstances with this
6 young 14-year old girl.

7 Now, I'd like to address the question
8 of sentencing. The Government recommends a sentence
9 within the guideline range and we recommend one at the
10 higher end of the guideline range, Your Honor.

11 We do this because of the facts and
12 circumstances of this case. The defendant has
13 admitted his -- that when he left New Jersey to go to
14 Pennsylvania to pick up the victim that night, he did
15 so with the intent to have sex with her, that when he
16 picked her up in Pennsylvania and took her back to New
17 Jersey, he did that with the intent to have sex with
18 her.

19 And he's admitted the crime here. He's
20 admitted that he kissed her, he fondled her, he
21 digitally penetrated her, he had sex with her, and
22 this also resulted in some physical injuries to the
23 victim.

24 The medical examination of the victim
25 after the incident showed that she had abrasions and

1 bruises. And those are -- and that's another factor
2 for the Court to consider.

3 This is a victim who during her
4 examination told the medical personnel that she'd
5 never had sex before prior to Mr. Shaman. She told
6 Mr. Shaman -- well, let me step back. She told the
7 police in the interview immediately after the incident
8 that she told Mr. Shaman that she didn't want to have
9 sex, that making out was okay, but the sex part was
10 not, and that she didn't want to do that.
11 Nonetheless, she did it anyway.

12 So these are significant factors and
13 it's a serious offense. Mr. Nenner recognized it as a
14 heinous offense and we agree with that. When we said
15 in our sentencing memo that the defendant took her
16 sexual innocence, but really speaking that he took her
17 virginity. She had not had sex before, and her first
18 sexual experience with sex was in the back seat of a
19 car with a man who had taken her from her house, and
20 she didn't want to do it.

21 So, Your Honor, these are very serious
22 charges that Mr. Shaman has pleaded guilty to. And
23 under the circumstances of this case, where she is a
24 14-year old girl, just turned 14, and he was 29 at the
25 time, and takes -- and does all this. She's 14 years

1 old and he took advantage of this young girl who
2 wanted to run away from home and took her to New
3 Jersey.

4 Now, New Jersey makes sense for Mr.
5 Shaman to take her there. That's where he's from, he
6 was born there, he's lived there most of his life, he
7 knows New Jersey. To the extent he's going to find a
8 place where he feels comfortable having sex in a car
9 with her, New Jersey makes more sense. So there are
10 -- there certainly is a reason for him to have taken
11 her there in order to have sex with her.

12 So, Your Honor, in conclusion I would
13 say that I think I've responded to the -- oh, no, not
14 completely. Let me also address the questions that
15 Mr. Nenner has raised concerning Mr. Shaman's
16 psychological matters.

17 Mr. Nenner has identified certain
18 factors and so has the presentence report concerning
19 circumstances which occurred during Mr. Shaman's
20 childhood and teenage years, and also the automobile
21 accident which occurred about 18 months before this
22 incident. And we recognize those certainly could have
23 some effect on Mr. Shaman.

24 What the Court should look at, however,
25 Your Honor, is Mr. Shaman's abilities and condition on

1 the night of the offense. When he went to
2 Pennsylvania and picked up the victim and took her
3 back to New Jersey, at that time, as Mr. Nenner has
4 said, he was the owner and operator of a successful
5 and income producing moving company. He was fully
6 employed, he was running the company, he had
7 employees. He was showing that he was pretty capable
8 in the world.

9 He also was able to engage in these
10 discussions with the victim and her birth mother
11 concerning a plan that he took advantage of to help
12 her go to South Carolina. That shows a significant
13 amount of capability and ability to manipulate and to
14 use the circumstances to his advantage.

15 So we would suggest that those indicate
16 that while these other issues may affect him long-
17 term, on the night of the incident, he was functioning
18 quite well. And sufficiently well that these other
19 circumstances should not have significant mitigation
20 in the Court's sentencing.

21 We have no objection, of course, to the
22 Court recommending that the defendant get medical
23 treatment while in custody serving his sentence, and
24 we believe that would be wholly appropriate.

25 So, Your Honor, for all of these

1 reasons, we recommend a custody sentence within the
2 guideline range, and recommend at the high end of the
3 guideline range because of the nature and
4 circumstances of this case.

5 They showed planning, they showed
6 manipulation, and they violated this young girl. To
7 the extent that other crimes may carry other
8 sentences, such as statutory rape or sexual assault,
9 those are other crimes. The guidelines which are
10 applied here, apply to the acts which Mr. Shaman did,
11 as he admitted in his plea agreement, and these
12 guidelines are appropriate for this crime.

13 Congress -- the Sentencing Commission
14 has set those out, Congress has set a maximum of 30
15 years for this crime, and of course, we're not asking
16 for anything near there, but the 30 year maximum
17 certainly indicates the seriousness that Congress has
18 placed upon this kind of violation.

19 So for these reasons, Your Honor, we
20 recommend a custody sentence near the high end of the
21 guidelines. We also believe the Court should impose
22 some level of fine, although perhaps not as high as
23 the low end of the sentencing defined guidelines.

24 We also ask, Your Honor, that as part
25 of the sentence you formally order the forfeiture of

1 his BMW automobile. The Court signed the order the
2 other day, but that should be a part of the Court's
3 orally pronounced sentence here today. Thank you,
4 Your Honor.

5 THE COURT: Thank you. Is there
6 anything further from anyone?

7 (No response)

8 THE COURT: Hearing not, I adopt and
9 credit the presentence report, the factual findings
10 and guideline application. You may declare a ten
11 minute recess.

12 THE CLERK: All rise. We will
13 reconvene at five after 4.

14 (Recessed at 3:54 p.m.; reconvened at 4:48 p.m.)

15 THE CLERK: Court is again in session.

16 THE COURT: Please be seated.

17 Will the defendant and his lawyer
18 please rise?

19 Pursuant to the Sentencing Reform Act
20 of 1994, it is the judgment of the Court that the
21 Defendant, Louay Shaman, is hereby committed to the
22 custody of the Bureau of Prisons, the Federal Bureau
23 of Prisons to be imprisoned for a term of 96 months.

24 Upon release from imprisonment, the
25 defendant shall be placed on supervised release for a

1 term of ten years. Within 72 hours of release from
2 the custody of Bureau of Prisons, the defendant shall
3 report in person to the probation office in the
4 district to which the defendant is released.

5 While on supervised release, the
6 defendant shall not commit another federal, state, or
7 local crime, and shall be prohibited from possessing a
8 firearm or other dangerous device, shall not possess
9 an illegal controlled substance, and shall comply with
10 the other standard conditions that have been adopted
11 by this Court.

12 The defendant must submit to one drug
13 test within 15 days of commencement of supervised
14 release, and at least two tests thereafter, as
15 determined by the probation officer.

16 In addition, the defendant shall comply
17 with the following special conditions: The defendant
18 shall participate in a mental health program for
19 evaluation and/or treatment, and abide by the rules of
20 any such program until satisfactorily discharged.

21 The defendant shall participate in a
22 sex offender treatment program for evaluation and/or
23 treatment, and abide by the rules of any such program
24 until satisfactorily discharged.

25 The defendant shall report to the

1 United States Probation Office any regular contact
2 with children of either sex under the age of 18. The
3 defendant shall not obtain employment or perform
4 volunteer work which includes regular contact with
5 children under the age of 18.

6 The defendant shall register with the
7 state sex offender registration agency in any state
8 where the defendant resides, is employed, carries on a
9 vocation, or is a student, as directed by the
10 probation officer.

11 The defendant shall cooperate in the
12 collection of DNA as directed by the probation
13 officer, and to any examinations during supervision of
14 the defendant's computer, and any devices, programs,
15 or application.

16 The defendant shall allow the
17 installation of any hardware or software systems which
18 monitor or filter computer use. The defendant shall
19 abide by the standard conditions of computer
20 monitoring and filtering that will be approved by this
21 Court.

22 The defendant is to pay the cost of the
23 computer monitoring, not to exceed the monthly
24 contractual rate in accordance with the probation
25 officer's discretion.

1 The Court finds that the defendant does
2 not have the ability to pay a fine. The Court will
3 waive the fine in this case. It is further ordered
4 that the defendant shall pay to the United States a
5 total special assessment of \$100 which shall be due
6 immediately.

7 It is ordered that the defendant shall
8 forfeit to the United States Bureau of Investigation
9 all of his right, title, and interest in one black
10 1999 BMW motor vehicle, Model 528i, Vehicle
11 Information Number WBADM5330XBY15013.

12 The Court has reviewed these conditions
13 of supervision and finds that they are reasonably
14 related to statutory goals, consistent with United
15 States Sentencing Commission Policy, and that the
16 liberty deprivations are no greater than is reasonably
17 necessary.

18 This sentence was imposed after
19 consideration of the sentences available, advisory
20 guideline range, and Section 3553 factors because it
21 is consistent with the nature, circumstances, and
22 seriousness of defendant's offense, and defendant's
23 history, characteristics, education, vocational,
24 medical and corrective needs, as well as the need for
25 just and non-disparate punishment, deterrence and

1 protection of the public. I have considered the
2 defendant's sentencing grounds.

3 Do you understand your sentence, Mr.
4 Shaman?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. You may be
7 seated.

8 Mr. Shaman, under the law, I'm required
9 to state for the record and for your benefit the
10 reasons why I have imposed the sentence I have
11 imposed, and I'm going to do that at this time.

12 I have just sentenced the Defendant,
13 Louay Shaman, in this matter. Mr. Shaman is a 32-year
14 old individual with the offense for which he has just
15 been sentenced representing his second criminal
16 conviction.

17 Mr. Shaman was sentenced in this matter
18 based on his sexual contact with a 14-year old girl.
19 The defendant and the minor had contact by way of
20 social media outlets for approximately two days before
21 Mr. Shaman traveled from New Jersey to Pennsylvania.

22 He picked up the minor at her home near
23 Allentown, Pennsylvania. The defendant traveled back
24 to New Jersey with the minor where he had sexual
25 contact with the victim in his automobile in New

1 Jersey.

2 The victim's parents reported her
3 missing and contacted police. They were able to
4 ascertain Mr. Shaman's phone number and they contacted
5 him. The police made contact with the defendant and
6 instructed her to bring the minor back to her home
7 immediately.

8 On March 5, 2012, Mr. Shaman drove the
9 minor to the police station in Pennsylvania. The
10 defendant voluntarily submitted to a buccal swab test.
11 The victim was taken to a local hospital where she
12 underwent numerous tests. The results of the tests
13 revealed Mr. Shaman's DNA was present on the victim's
14 lower thigh, his sperm was present in the victim's
15 underwear, and other traces were found on the victim's
16 breast.

17 The defendant's conduct in this matter
18 is disturbing, violent, and worthy of a lengthy period
19 of incarceration. Mr. Shaman was completely aware of
20 what he was doing and who and how old the victim was
21 in this matter.

22 It should be noted that the defendant
23 was unable to provide detailed information regarding
24 his early childhood and adulthood prior to this arrest
25 for the instant offense during his presentence

1 interview. However, the depth of detail and recall of
2 events was not an issue when he was interviewed by Dr.
3 Christopher Lorah, Ph.D., in connection with the
4 presentence report preparation.

5 Mr. Shaman has limited verifiable
6 employment history. He has no current or active
7 substance abuse, which needs to be addressed while
8 incarcerated.

9 The defendant has fathered one child.
10 His approximately 2-year old daughter resides with his
11 wife in New Jersey.

12 An important sentencing concern
13 pursuant to Title 18 United States Code Section
14 3553(a)(2)(C), for the Court to consider is the
15 protection of the public and punishment of Louay
16 Shaman. The need for incarceration in this matter is
17 increased when considering the nature of the offense,
18 the degree of the harm, and the conduct comprised with
19 respect to the counts of conviction.

20 The Court has imposed a sentence that
21 takes into account all of the factors of sentencing,
22 as defined at 18 U.S.C. Section 3553(a).
23 Consideration of the seriousness of the offense, just
24 punishment of the offense, adequate deterrence, the
25 history and characteristics of the defendant, the need

1 to protect the public from further crimes of the
2 defendant, and other correctional treatment for Louay
3 Shaman in a most effective manner.

4 Considering the overwhelming
5 victimization of the 14-year old minor, a sentence at
6 the middle of the guideline range, 96 months was
7 imposed. The guideline range being based on a total
8 offense level of 29, and a criminal history category
9 of 1, yielding a guideline sentencing range of 87 to
10 108 months; the sentence of 96 months being equivalent
11 to eight years, which is in the middle of the
12 guideline range, which in years computes to a range of
13 7 years plus 3 months to 9 years.

14 The sentence also included 10 years of
15 supervised release following incarceration, and a \$100
16 special assessment. Because I concluded that
17 defendant did not have the financial ability to pay a
18 fine, I did not impose a fine.

19 I did, however, award the mandatory
20 \$100 special assessment for a special victim's and
21 witness compensation fund.

22 This sentence affords maximum
23 deterrence to others who would be tempted to commit a
24 similar offense, as well as affording deterrence to
25 this defendant from committing other similar offenses.

1 The sentence also protects the public
2 from further crimes of the defendant for at least as
3 long as he remains incarcerated.

4 Mr. Shaman, when you entered your
5 guilty plea in this matter before me on January 6th,
6 2014, I advised you in considerable detail of your
7 appeal rights, and which of those appeal rights you
8 had given up in your written guilty plea agreement.
9 Do you remember those discussions?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. Now, those are
12 still the appeal rights which you have, and which you
13 gave up in your guilty plea agreement respectively.
14 And because January of 19 -- of 2014 was some time
15 ago, I'm going to re-remind you of those appeal rights
16 at this time.

17 Ordinarily, a defendant can appeal his
18 sentence to this Court and to an appeal court. A
19 defendant may file both a direct appeal and a
20 collateral appeal from a sentence. I'm now going to
21 explain to you the appeal rights a defendant
22 ordinarily has, and which of those rights you have
23 given up in your guilty plea agreement.

24 First, we are going to discuss a
25 collateral appeal from your sentence, and then we will

1 talk about a direct appeal.

2 A collateral appeal from a sentence
3 would include the filing of what we call a petition
4 for writ of habeas corpus. If your federal
5 constitutional rights or other important federal
6 rights are being violated by my sentence, or by your
7 imprisonment, you are permitted ordinarily to file a
8 petition for writ of habeas corpus initially with this
9 Court and thereafter. If this Court denies your
10 petition, you can appeal it to an appeal court.

11 This Court is the United States
12 District Court for the Eastern District of
13 Pennsylvania. The appeal court is the United States
14 Court of Appeals for the Third Circuit, which is
15 located at 601 Market Street in Philadelphia,
16 Pennsylvania.

17 If either Court agrees with your
18 collateral appeal, the Court may set your sentence
19 aside, reduce it, eliminate it, or modify any illegal
20 or improper or unreasonable conditions of the
21 sentence, or the appeal court could direct me or
22 another judge to resentence you. And under certain
23 circumstances, you could be released from prison or
24 released early.

25 Another type of collateral appeal is a

1 petition for post-sentence relief, such as a petition
2 alleging that you were provided ineffective assistance
3 by your counsel.

4 You have stated to me at your guilty
5 plea agreement, that you were satisfied with the
6 services of your counsel, privately retained counsel,
7 David Scott Nenner, and that he had provided you and
8 has provided you with effective assistance as your
9 attorney. However, if he had not or does not, you can
10 file a collateral appeal from your sentence on those
11 grounds.

12 Now, Mr. Nenner, you were on your feet,
13 was there something you wish to say to the Court?

14 MR. NENNER: Yes, Judge, and I didn't
15 mean to interrupt, but he's well aware of his
16 appellate rights.

17 THE COURT: He is indeed, and I'm going
18 to advise him of them --

19 MR. NENNER: Yes, sir.

20 THE COURT: -- in full.

21 MR. NENNER: No problem.

22 THE COURT: And he will not have any
23 basis on this record to say that he had forgotten them
24 or he didn't understand them at the time.

25 MR. NENNER: That's why I said that.

1 THE COURT: All right. Do you
2 understand those things that I just told you about a
3 collateral appeal, Mr. Shaman?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. Now, I'm going
6 to tell you about a direct appeal. In addition to a
7 collateral appeal, you ordinarily also have the right
8 to file a direct appeal from your sentence. A direct
9 appeal is filed directly with the United States Court
10 of Appeals for the Third Circuit.

11 You do not have to first file it with
12 this court, as you have to do in the case of a
13 collateral appeal. In a direct appeal from a
14 sentence, you may ordinarily appeal any errors which
15 the Government or I may have committed in your
16 sentencing, and any violations of your federal rights.

17 For example, you may appeal directly if
18 my sentence was higher than authorized by law in any
19 sentencing category. You may appeal if I imposed an
20 illegal or improper condition of sentence. You may
21 appeal if my sentence were unreasonable. You may
22 appeal directly if I failed to calculate the sentence
23 guidelines or calculated them incorrectly, or failed
24 to consider them.

25 Or if I decided to apply the

1 guidelines, as I did, but applied them erroneously.
2 For example, if I were to depart upwards from the
3 sentence guidelines under circumstances not permitted
4 by the guidelines. You may also appeal directly from
5 my sentence if I or the Government violated any of
6 your rights granted by the United States Constitution,
7 federal statutes, federal appeal court decisions, or
8 federal procedural rules, such as the Federal Rules of
9 Criminal Procedure and the Federal Rules of Evidence
10 to your prejudice in sentencing you.

11 Those are some of the things that you
12 may ordinarily appeal in a direct appeal from my
13 sentence. Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: If the Third Circuit Court
16 of Appeals grants your direct appeal, it could grant
17 you the same relief as you would receive in a
18 successful collateral appeal. That is, the appeal
19 court could modify your sentence, set your sentence
20 aside, it could order me or another judge to
21 resentence you, eliminate or modify any illegal,
22 improper, or unreasonable conditions of your sentence,
23 and under certain circumstances, the appeal court
24 could release you from prison or release you early.
25 Do you understand those things?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: You have one year from the
3 date your conviction is final to file a collateral
4 appeal. And you have 14 days from the date your
5 conviction is final to file a direct appeal. If you
6 miss those deadlines, you may give up forever your
7 right to take those appeals. Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: A defendant may file both a
10 direct and a collateral appeal from a sentence. If
11 you do not file a direct appeal, then the one year you
12 have to file a collateral appeal will start from the
13 date I file a document called the judgment of sentence
14 in your case.

15 A judgment of sentence is a document
16 signed by me which will contain the date of your
17 sentence, today's date, March 13, 2015, and the
18 conditions of your sentence.

19 If you do file a direct appeal, then
20 the one year you have to file a collateral appeal
21 begins to run either when the decision of the Third
22 Circuit Court of Appeals becomes final in your direct
23 appeal, or if you appeal further to the United States
24 Supreme Court, when the Supreme Court's decision
25 becomes final in your direct appeal.

1 The Government is not entitled to file
2 a collateral appeal from a sentence, only the
3 defendant may do that. But the Government may file a
4 direct appeal, as well as you. If the Government does
5 file a direct appeal from your sentence, it has 30
6 days in which to do so. If the Government does file a
7 direct appeal, then your time in which to file a
8 direct appeal is increased from 14 days to a period of
9 14 days after the Government takes its appeal.

10 Do you understand that as well?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: The time when the clock
13 starts running on the deadlines for you and the
14 Government to file an appeal is when I file, in the
15 Office of the Clerk of Court for this court, the
16 United States District Court for the Eastern District
17 of Pennsylvania, a document called a judgment of
18 sentence.

19 That document is also sometimes
20 referred to as a judgment in a criminal case. As I
21 told you, this document will be signed by me as your
22 sentencing judge and will contain the date of your
23 sentence, today's date, and will contain all of the
24 terms and conditions of your sentence.

25 Customarily, I filed this document from

1 between a couple of days to a couple of a weeks after
2 your sentence hearing. When that document is
3 delivered to the Clerk of Court which we call filing,
4 and when it is recorded in the official records of his
5 office, called the docket entries, that starts your
6 time clock running for the period of time in which you
7 and the Government must file your appeals. Do you
8 understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: The way you file a direct
11 appeal is by filing a document called a notice of
12 appeal. This document will state the date of the
13 sentence order from which you are appealing, and the
14 name of the sentencing judge, my name, Judge Gardner.

15 Even though in a direct appeal you are
16 directly appealing to the Third Circuit Court of
17 Appeals, you must file your notice of appeal with the
18 clerk of this court, the district court, which is the
19 trial court and the sentencing court, not with the
20 clerk of the appeal court. Do you understand?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: There are several ways you
23 can file your notice of appeal. You could file it
24 personally by delivering it to the clerk of court, but
25 you are incarcerated, so you cannot do that. But you

1 can mail the notice of appeal to the clerk of court.
2 In fact, you can request any adult to file it or mail
3 it for you. However, you must sign the notice of
4 appeal before it is filed or mailed by you or another
5 adult. Do you understand?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: You can request your
8 attorney to file the notice of appeal or mail the
9 notice of appeal for you, or you may request any
10 deputy clerk of this court, including the man sitting
11 in front of me at the computer to file it for you.

12 And so long as you make the request
13 within the 14 days you have to do, your notice of
14 appeal will both be signed and filed on your behalf by
15 your attorney or by the deputy clerk. Do you
16 understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: As I already said, you
19 filed a collateral appeal by filing a document called
20 a petition with the clerk of this court, and you file
21 a direct appeal by filing a notice of appeal with the
22 same official.

23 In a direct appeal, the Third Circuit
24 Appeal Court will set a deadline for your attorney to
25 prepare and file a brief. A brief is a written legal

1 document containing all of your reasons and the facts
2 and legal authority for your appeal. In both your
3 collateral appeal petition and your direct appeal
4 brief, you must state all of the errors and violations
5 of your rights from which you are appealing, and all
6 of the reasons for your appeal, and all other facts
7 and legal authority in support of your appeal.

8 If you leave out any of those things
9 from your petition or brief, or if you fail to file a
10 petition or brief or file it late, you may give up
11 forever your right to rely on those appeal grounds.
12 And as I said earlier, if you miss the time deadlines
13 for appealing, you may give up forever your right to
14 take such appeals. Do you understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: All defendants have the
17 right to be represented by an attorney in connection
18 with the taking of any appeals from a sentence. If
19 you can afford the services of a private attorney, you
20 may hire any attorney or attorneys who you wish, so
21 long as those attorneys are properly certified to
22 practice law before the appeal court, and so long as
23 they are in good standing with that court.

24 If you are unable to continue to afford
25 the services of a private attorney, then upon

1 application to the Court, the Court will appoint an
2 attorney to represent you in a direct appeal at no
3 cost to you. You do not have the right to a court-
4 appointed attorney free in a collateral appeal, only
5 in a direct appeal, unless a hearing is required in
6 connection with your collateral appeal, in which case
7 the Court will appoint an attorney to represent you in
8 your collateral appeal hearing, if you cannot afford
9 to hire a private attorney. Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: You also have the right to
12 represent yourself in either type of appeal. Also
13 some attorneys and agencies and Bar associations may
14 be willing to represent you without cost or at a
15 reduced fee. But you do not have the right to a Court
16 appointed free attorney in a collateral appeal, unless
17 there is a hearing before the Court concerning that
18 appeal. Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And if you are poor and
21 unable to pay the customary appeal fees and costs,
22 upon application, the Court will relieve you from
23 those obligations in both a direct appeal and a
24 collateral appeal. Do you understand those things?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Those are the appeal rights
2 that a defendant ordinarily has. In your written
3 guilty plea agreement, however, you have given up some
4 but not all of those appeal rights. I'm now going to
5 discuss with you which of those appeal rights you are
6 giving up in your guilty plea agreement.

7 In your guilty plea agreement, you have
8 given up entirely your right to file a collateral
9 appeal with one exception. You may still file a
10 petition for collateral relief under Title 28 United
11 States Code Section 2255, but may only raise a claim
12 that your attorney provided constitutionally
13 ineffective assistance to you.

14 Therefore, even if your federal
15 constitutional rights or other important federal
16 rights were violated by my sentence, or by your
17 imprisonment, you cannot file a petition for writ of
18 habeas corpus or any other type of collateral appeal
19 than the one I just mentioned.

20 However, you do not give up the rights
21 to assert any constitutional claims that the relevant
22 case law says cannot be given up. Do you understand
23 that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Concerning a direct appeal,

1 you have given up some but not all of your appeal
2 rights in your guilty plea agreement. The Government,
3 as I had said, may file a direct appeal, and if it
4 does so, you too may file a direct appeal without
5 limit in the kinds of things that any defendant can
6 raise in a direct appeal, including those things I
7 have just gone over with you. Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: If, however, the Government
10 does not file a direct appeal, then your ability to
11 file a direct appeal is severely restricted by your
12 guilty plea agreement. You will still be permitted to
13 take a direct appeal on three grounds, whether or not
14 the Government takes a direct appeal, but you will
15 give up all the other grounds for a direct appeal,
16 that you would otherwise have as a defendant, because
17 of the terms of your guilty plea agreement.

18 These matters concerning the rights
19 which you are giving up on appeal are covered in
20 paragraph 12 of your written guilty plea agreement on
21 pages 6 and 7 of that document.

22 And on page 7, the three matters which
23 you will be permitted to appeal directly no matter
24 what the Government does concerning an appeal are
25 listed. Whether the Government appeals or not, you

1 may directly appeal my sentence on any count of
2 conviction if the sentence exceeds the statutory
3 maximum for that count. Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Second, you may appeal
6 directly no matter what the Government does concerning
7 an appeal, challenging a decision by me to impose an
8 upward departure pursuant to the sentence guidelines.
9 Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Third and finally, you may
12 appeal directly no matter what the Government does
13 concerning an appeal, challenging a decision by me to
14 impose an upward variance above the final sentence
15 guideline range determined by the Court. Do you
16 understand that as well?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: But those are the only
19 three things that you can appeal directly if the
20 Government itself does not appeal. You cannot appeal
21 anything else if the Government does not appeal
22 directly.

23 Now, you may still appeal collaterally
24 one thing only, and that would be if your attorney was
25 not providing you or had not provided you with

1 effective assistance as your lawyer, as I said
2 earlier.

3 Do you understand all of those things
4 about your appeal rights?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you have any questions
7 at this time about either your appeal rights or my
8 sentence?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: If you have any questions
11 about either of those things, ask your attorney, and
12 if you are thinking about taking an appeal, talk to
13 Attorney Nenner promptly, because as I said, you may
14 have as little as 14 days in which to take an appeal.
15 Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Do counsel agree that I
18 have correctly and completely advised the defendant of
19 his appeal rights and which of those rights he has
20 given up in his guilty plea agreement?

21 MR. NENNER: Yes, Your Honor.

22 MR. GLENN: Yes, Your Honor.

23 THE COURT: Does either counsel wish
24 that or request that I modify, change, omit, add, or
25 correct anything in the colloquy?

1 MR. NENNER: No, sir.

2 MR. GLENN: No, Your Honor.

3 THE COURT: All right. Is there
4 anything else to come before the Court at this time
5 concerning the sentence of Louay Shaman?

6 MR. GLENN: Yes, Your Honor.

7 THE COURT: All right. And what is
8 that?

9 MR. GLENN: The defendant made a motion
10 for a downward departure.

11 THE COURT: Oh, thank you for reminding
12 me of that. I will address that.

13 As I indicated earlier today and
14 earlier this afternoon in this hearing, the defendant
15 filed a motion for downward departure and/or downward
16 variance and an accompanying sentencing memorandum.
17 It was dated and filed two days ago on March 11, 2015.

18 As is perhaps apparent from my
19 sentence, but to make it clear, I denied the
20 defendant's motion for downward departure and/or
21 downward variance, and imposed a sentence guideline
22 range sentence upon the defendant.

23 Having considered the matters contained
24 in the presentence report and the matters argued by
25 counsel at the sentencing hearing today, I concluded

1 that the defendant's request for a downward departure
2 from the sentence guidelines pursuant to Guideline
3 Section 5(k) 2.10 was inappropriate, and that that
4 guideline section is not applicable to the facts of
5 this case.

6 That section refers to a victim
7 contributing to the offense, and according to the
8 guidelines, Section 5(k) 2.10 generally will not be
9 applicable in a non-violent offense. And I consider
10 this offense to be a non-violent offense.

11 And I therefore have rejected the
12 defendant's request for a downward guideline
13 departure, because I know of no other section of the
14 guidelines that would apply here.

15 The defendant also made arguments which
16 could apply to his request for a downward variance
17 concerning what, in effect, amounted to a
18 characterization by defense counsel of mitigating
19 circumstances.

20 The childhood experiences of the
21 defendant, his psychological condition, and other
22 things that appear on the record concerning the
23 defendant's position at sentencing as articulated by
24 his attorney in defense counsel's sentencing
25 statement.

1 The mitigation argument also sounded a
2 bit like the defendant was blaming the victim for the
3 crime that he committed here. And I agree with the
4 Government that the facts of this case where the
5 defendant had a desire to have sex with a 14-year old
6 female, and picked her up, drove from New Jersey to
7 Pennsylvania to pick her up and drove her back to New
8 Jersey where he had sex with her in his automobile
9 does not provide mitigating circumstances, or any
10 other circumstances which would justify a downward
11 variance under the guidelines.

12 As Government's counsel said in his
13 argument, he kissed her, he fondled her, he digitally
14 penetrated her, she had abrasions and bruises, she
15 told the medical people that she never had sex before,
16 and she told the police that she told the defendant
17 she did not want to have sex, although she would not
18 have objected to what she called making out.

19 Regarding the defendant's psychological
20 circumstances, I agreed with the Government that
21 whatever the defendant's childhood, teenaged years may
22 have involved or an automobile accident that he had 18
23 months prior to this incident, on the night of the
24 offense he drove from New Jersey to Pennsylvania and
25 then back to New Jersey again, he picked up the victim

1 in Pennsylvania and then took her to New Jersey. At
2 that time, he was gainfully employed, and I believe he
3 owned a moving company, and he had employees working
4 for him. And in the words of Government counsel, on
5 the night of the incident, the defendant was
6 functioning quite well.

7 The Government did not object to my
8 recommending that the defendant get medical and/or
9 psychological treatment, and I indeed did make that a
10 condition of his supervised release portion of his
11 sentence.

12 I believe that the sentence guideline
13 range is appropriate, and applies to the actions of
14 the defendant. And accordingly, I imposed a guideline
15 range sentence, not a downward variance below the
16 guidelines.

17 Government counsel requested that I
18 impose a fine as part of my sentence, and imposed a
19 sentence at the high end of the guidelines, and
20 requested forfeiture of the defendant's BMW vehicle.

21 I did not impose a fine, because I
22 concluded the defendant did not have the financial
23 ability to pay a fine. I felt for all the reasons
24 I've just articulated that a sentence in the middle of
25 the guidelines, as opposed as to the high end of the

1 guidelines was the sentence sufficient but not greater
2 than necessary to recognize and be consistent with the
3 sentencing factors contained in Title 18 United States
4 Code Section 3553(a).

5 I agreed with the Government that his
6 BMW car should be forfeited, and I, in fact, had
7 already signed a final order of forfeiture for that
8 vehicle, but as Government counsel correctly asserted,
9 it's required, even though I've signed a forfeiture
10 order already, that I include the same forfeiture as a
11 condition of sentence. And I have done so. Those
12 then are the reasons why I have imposed this sentence.

13 Is there anything else to come before
14 the Court at this time concerning the sentencing of
15 Louay Shaman?

16 MR. GLENN: No, Your Honor.

17 MR. NENNER: No, Your Honor.

18 THE COURT: All right. Then you may
19 adjourn court.

20 THE CLERK: All rise.

21 (Proceedings concluded at 5:28 PM)

22 * * * * *

CERTIFICATION

I, Sheila G. Orms, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: March 26, 2015



Signature of Approved Transcriber